



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: November 4, 2010

CBCA 938

JAVIS AUTOMATION & ENGINEERING, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Crishon D. Jordan, Knightdale, NC, counsel for Appellant.

Stephen R. Palmer, Office of the Regional Solicitor, Department of the Interior, Sacramento, CA, counsel for Respondent.

Before **DANIELS** (Chairman), **GILMORE**, and **HYATT**, Board Judges.

HYATT, Board Judge.

Appellant, JAVIS Automation & Engineering, Inc. (JAVIS), has filed a request for reconsideration asking the Board to reconsider its decision granting in part the Government's motion for summary relief. *JAVIS Automation & Engineering, Inc. v. Department of the Interior*, CBCA 938, 09-2 BCA ¶ 34,309. JAVIS had appealed a contracting officer's decision asserting that the Government was entitled to recoup an overpayment of \$333,955. In its decision, the Board found that as a matter of law the parties had entered into a cost-plus-fixed-fee (CPFF) contract for the provision of information technology and geographic information system services under task orders issued to JAVIS by the Department of the Interior, Bureau of Reclamation (BOR). The Board rejected JAVIS's contention that the task orders should be billed on a time and materials (T&M) basis.

Although the Board agreed with BOR's position as to the proper basis for billing costs, the Board nonetheless noted that it would not be possible to resolve the appeal in its entirety because:

Although we are persuaded that, as a matter of law, BOR is entitled to prevail on the question of whether the proper billing rates are CPFF or T&M, we are not convinced that the amount of the overpayment alleged by BOR is sufficiently accurate that we should deny the appeal outright. Although both parties seem to expect that resolution of the question of whether the task orders were CPFF or T&M will fully resolve the appeal, that is not the case. Neither party has provided sufficient support for the dollars claimed to decide the amount in dispute given the record available to the Board. Thus, while the agency has prevailed as to the type of contract performed, it has not demonstrated that the amount by which it considers JAVIS to have been overpaid is correct. Accordingly, we grant BOR's motion limited to the question of the nature of the contract and the corollary pricing of the services provided. The amount of the overpayment, if any, that BOR may be entitled to collect back from the contractor remains to be determined.

09-2 BCA at 169,481. Thus, the decision left open the matter of quantum for further development by the parties, either on their own through informal discussions or formally through further proceedings at the Board.

Appellant's request seeks "reconsideration regarding the amount of money on which this dispute centers" and contends that even under CPFF billing JAVIS is still owed money. In support of this request, appellant has resubmitted its final invoice for the task orders in question, based on the CPFF billing rates calculated by the Defense Contract Audit Agency, and asserts that this invoice demonstrates that JAVIS was not overpaid by BOR and is in fact entitled to be paid an outstanding balance of \$628,189.28.

Respondent opposes the motion, pointing out that appellant is not actually seeking reconsideration with respect to the Board's decision concerning the proper billing rates that should be applied under the contract, but rather seeks to preempt further proceedings with respect to resolution of the remaining quantum issue.

Appellant misapprehends the purpose of the Board's Rule 26, 48 CFR 6101.26 (2009), which governs motions for reconsideration. As the Board has previously stated:

The Board's Rule 26 explains that reconsideration may be granted for any of the following reasons: newly discovered evidence which could not have been earlier discovered, even through due diligence; justifiable or excusable mistake, inadvertence, surprise, or neglect; fraud, misrepresentation, or other misconduct of an adverse party; the decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application; the decision is void, whether for lack of jurisdiction or otherwise; or any other ground justifying reconsideration, including a reason established by the rules of common law or equity applicable as between private parties in the courts of the United States.

Oregon Woods, Inc. v. Department of the Interior, CBCA 1072-R, 09-1 BCA ¶ 34,063, at 168,431, *aff'd sub nom. Oregon Woods, Inc. v. Salazar*, 355 F.App'x 403 (Fed. Cir. 2009); *accord Navigant SatoTravel v. General Services Administration*, CBCA 449-R, 09-2 BCA ¶ 34,207, at 169,107-08.

As respondent points out, since appellant's motion is not based on any of these grounds, appellant has not met the test for reconsideration set forth in the Board's Rule 26. *Corners and Edges, Inc. v. Department of Health and Human Services*, CBCA 1002-R, 09-2 BCA ¶ 34,236. The motion is improperly directed to a matter which has not yet been addressed by the Board.

Decision

The motion for reconsideration is **DENIED**.

CATHERINE B. HYATT
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

BERYL S. GILMORE
Board Judge